

2
3 As Amended by House Committee

4 *Session of 2002*

5
6 **SENATE BILL No. 575**

7
8 By Committee on Assessment and Taxation

9
10 2-12

11
12 AN ACT relating to income taxation; concerning the withholding against
13 certain distributions and awards; ~~defining trusts;~~ amending K.S.A.
14 ~~79-32,109 and K.S.A.~~ 2001 Supp. 79-3295 and 79-32,100a and re-
15 pealing the existing sections.

16
17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 2001 Supp. 79-3295 is hereby amended to read as
19 follows: 79-3295. (a) The term “employee” means a resident of this state
20 as defined by subsection (b) of K.S.A. 79-32,109, and amendments
21 thereto, performing services for an employer either within or without the
22 state and a nonresident performing services within this state, and includes
23 an officer, employee or elected official of the United States, a state, ter-
24 ritory, or any political subdivision thereof or any agency or instrumentality
25 thereof, and an officer of a corporation.

26 (b) The term “employer” means any person, firm, partnership, lim-
27 ited liability company, corporation, association, trust or fiduciary of any
28 kind or other type organization qualifying as an employer for federal in-
29 come tax withholding purposes and who maintains an office, transacts
30 business in or derives any income from sources within the state of Kansas
31 for whom an individual performs or performed any services, of whatever
32 nature, as the employee of such employer, and who has control of the
33 payment of wages for such services, or is the officer, agent or employee
34 of the person having control of the payment of wages. It also includes the
35 United States, the state and all political subdivisions thereof, and all agen-
36 cies or instrumentalities of any of them.

37 (c) *The term “distributee” means any person or organization who*
38 *receives a distribution which is subject to withholding of income tax pur-*
39 *suant to this act.*

40 (d) *The term “distribution” means a distribution from a corporation*
41 *for which an election as an S corporation under subchapter S of the fed-*
42 *eral internal revenue code is in effect, from a limited liability company*
43 *formed under the laws of the state of Kansas, or from a partnership.*

1 (e) The term “payee” means any person or organization who receives
2 a payment other than wages which is subject to withholding of income
3 tax pursuant to this act.

4 (f) The term “payment other than wages” means a payment that is
5 subject to federal income tax withholding and taxable under the Kansas
6 income tax act, and that is a payment:

7 (1) for any supplemental unemployment compensation, annuity, or
8 sick pay;

9 (2) pursuant to a voluntary withholding agreement;

10 (3) of gambling winnings;

11 (4) of taxable payments of Indian casino profits;

12 (5) for any vehicle fringe benefit;

13 (6) of periodic payments of pensions, annuities, and other deferred
14 income;

15 (7) of nonperiodic distributions of pensions, annuities, and other de-
16 ferred income; or

17 (8) of eligible rollover distributions of pensions, annuities, and other
18 deferred income.

19 (g) The term “payor” means any person or organization, other
20 than an employer, who makes payments, *other than wages or distribu-*
21 *tions*, which are subject to withholding of income tax pursuant to this act.

22 (h) The term “wages” means wages as defined by section 3401(a)
23 of the federal internal revenue code which are taxable under the Kansas
24 income tax act, *and shall include any prize or award paid to a professional*
25 *athlete at a sporting event held in this state.*

26 Sec. 2. K.S.A. 2001 Supp. 79-32,100a is hereby amended to read as
27 follows: 79-32,100a. Every payor who ~~withholds federal income tax:~~

28 ~~—(a) For any supplemental unemployment compensation, annuity or~~
29 ~~sick pay;~~

30 ~~—(b) pursuant to a voluntary withholding agreement;~~

31 ~~—(c) on gambling winnings;~~

32 ~~—(d) on taxable payments of Indian casino profits;~~

33 ~~—(e) for any vehicle fringe benefit;~~

34 ~~—(f) on periodic payments of pensions, annuities and other deferred~~
35 ~~income;~~

36 ~~—(g) on nonperiodic distributions of pensions, annuities and other de-~~
37 ~~ferred income; or~~

38 ~~—(h) on eligible rollover distributions of pensions, annuities and other~~
39 ~~deferred income, from payments made to those persons whose primary~~

40 ~~residence is in Kansas shall withhold and deduct an amount to be deter-~~
41 ~~mined in accordance with K.S.A. 2001 Supp. 79-32,100b 79-32,100d, and~~

42 ~~amendments thereto. is required under federal law to withhold upon~~
43 ~~payments other than wages pursuant to the federal internal revenue code~~

1 shall withhold and deduct an amount to be determined in accordance
2 with K.S.A. 79-32,100d, and amendments thereto, whenever the payee is
3 a person whose primary residence is in Kansas.

4 (b) A determination by the internal revenue service that relieves a
5 payor from withholding responsibility with respect to payments other
6 than wages to a payee shall also apply for Kansas income tax withholding
7 purposes. Whenever a payor is required to reinstate withholding for fed-
8 eral income tax with regard to any payee, such obligation shall be equally
9 applicable for Kansas withholding purposes.

10 (c) Every payor who makes a distribution as defined by subsection
11 (d) of K.S.A. 79-3295, and amendments thereto, shall withhold and deduct
12 an amount to be determined in accordance with K.S.A. 79-32,100d, and
13 amendments thereto, from amounts distributed or distributable to each
14 nonresident shareholder or partner.

15 **Sec. 3. K.S.A. 79-32,100 is hereby amended to read as follows:**
16 **79-32,100. As used in this act, unless the context otherwise**
17 **requires:**

18 ~~—(a) Any term used in this act shall have the same meaning as~~
19 ~~when used in a comparable context in the federal internal revenue~~
20 ~~code. Any reference in this act to the “federal internal revenue~~
21 ~~code” shall mean the provisions of the federal internal revenue~~
22 ~~code of 1986, and amendments thereto, and other provisions of~~
23 ~~the laws of the United States relating to federal income taxes, as~~
24 ~~the same may be or become effective at any time, or from time to~~
25 ~~time, for the taxable year.~~

26 ~~—(b) “Resident individual” means a natural person who is domic-~~
27 ~~iled in this state. A natural person who spends in the aggregate~~
28 ~~more than six months of the taxable year within this state shall be~~
29 ~~presumed to be a resident for purposes of this act in absence of~~
30 ~~proof to the contrary. A nonresident individual means an individ-~~
31 ~~ual other than a resident individual.~~

32 ~~—(c) “Resident estate” means the estate of a deceased person~~
33 ~~whose domicile was in this state at the time of such person’s death.~~

34 ~~“Nonresident estate” means an estate other than a resident estate.~~

35 ~~—(d) “Resident trust” means a trust which is administered in this~~
36 ~~state. A trust shall not be deemed to be administered in this state solely~~
37 ~~because it is subject to the jurisdiction of a district court within this state.:~~

38 ~~(1) A trust created by will of a decedent who at the time of death was~~
39 ~~domiciled in this state; (2) a trust created by, or consisting of property of,~~
40 ~~a person domiciled in this state on the date the trust or portion of the~~
41 ~~trust became irrevocable; (3) a trust administered in this state; (4) a trust~~
42 ~~any of the property of which is located in this state; or (5) a trust any one~~
43 ~~of the beneficiaries of which is domiciled in this state. “Nonresident~~

1 ~~trust” means a trust other than a resident trust.~~

2 ~~—(c) “Resident partner” means a partner who is a resident in-~~
3 ~~dividual, a resident estate, or a resident trust. “Nonresident part-~~
4 ~~ner” means a partner other than a resident partner.~~

5 ~~—(f) “Resident beneficiary” means a beneficiary of an estate or~~
6 ~~trust which beneficiary is a resident individual, a resident estate,~~
7 ~~or a resident trust. “Nonresident beneficiary” means a beneficiary~~
8 ~~other than a resident beneficiary.~~

9 ~~—(g) “Director” means the director of taxation.~~

10 ~~—(h) “Modified Kansas source income” means that part of a non-~~
11 ~~resident individual’s Kansas adjusted gross income as set forth in~~
12 ~~K.S.A. 79-32,117, and amendments thereto, derived from sources~~
13 ~~in Kansas. Items of income including unemployment compensa-~~
14 ~~tion, gain, loss or deduction reflected in Kansas adjusted gross in-~~
15 ~~come shall be considered derived from sources in Kansas to the~~
16 ~~extent that they are attributable to: (1) The ownership of any in-~~
17 ~~terest in real or tangible personal property in this state; (2) a busi-~~
18 ~~ness, trade, profession or occupation carried on in this state; (3) a~~
19 ~~business, trade, profession or occupation carried on partly within~~
20 ~~and partly without this state as determined by the uniform division~~
21 ~~of income for tax purposes act as set forth in K.S.A. 79-3271~~
22 ~~through K.S.A. 79-3293, and amendments thereto; (4) the distrib-~~
23 ~~utive share of partnership income, gain, loss and deduction deter-~~
24 ~~mined under this section as if the partnership were a nonresident~~
25 ~~individual; (5) the share of estate or trust income, gain, loss and~~
26 ~~deduction determined under K.S.A. 79-32,137, and amendments~~
27 ~~thereto; (6) prizes won from lottery games conducted by the Kan-~~
28 ~~sas lottery; (7) any winnings from parimutuel wagering derived~~
29 ~~from the conduct of parimutuel activities within this state; or (8)~~
30 ~~income from intangible personal property, including annuities,~~
31 ~~dividends, interest, and gains from the disposition of intangible~~
32 ~~personal property to the extent that such income is from property~~
33 ~~employed in a trade, business, profession or occupation carried on~~
34 ~~in Kansas. A nonresident, other than a dealer holding property~~
35 ~~primarily for sale to customers in the ordinary course of such~~
36 ~~dealer’s trade or business, shall not be deemed to carry on a busi-~~
37 ~~ness, trade, profession or occupation in Kansas solely by reason of~~
38 ~~the purchase and sale of property for such nonresident’s own~~
39 ~~account.~~

40 ~~—“Modified Kansas source income” shall not include: (1) Com-~~
41 ~~penetration paid by the United States for service in the armed forces~~
42 ~~of the United States, performed during an induction period by an~~
43 ~~individual not domiciled in this state; or (2) such individual’s share~~

~~of distributed or undistributed taxable income or net operating loss of a corporation which is an electing small business corporation unless an agreement is filed as provided in K.S.A. 79-32,139, and amendments thereto, in which event, the “modified Kansas source income” of such nonresident individual shall include such individual’s share of such corporation’s distributed and undistributed taxable income or net operating loss as such share is determined under the internal revenue code only to the extent, however, that such income, gain or loss is at the corporate level, derived from sources within Kansas.~~

[New Sec. 3. On January 1, 2003, the director of accounts and reports shall transfer \$39,200,000 from the state general fund to the state school district finance fund.]

~~Sec. 4.~~ K.S.A. ~~79-32,100~~ and K.S.A. 2001 Supp. 79-3295 and 79-32,100a are hereby repealed.

Sec. ~~4.~~ 5. This act shall take effect and be in force from and after its publication in the ~~statute book~~ **Kansas register**.